

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of STEVEN M CHAPMAN, Minor.

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner-Appellee,

v

STEVEN M CHAPMAN,

Respondent-Appellant.

UNPUBLISHED

December 27, 2007

No. 279547

Wayne Circuit Court

Family Division

LC No. 02-410815

Before: Whitbeck, C.J., and White and Zahra, JJ.

PER CURIAM.

Respondent Steven Chapman appeals as of right the trial court's order revoking his probation and placing him with the Michigan Department of Human Services.¹ We affirm.

I. Basic Facts And Procedural History

After a January 2007 hearing at which Chapman pleaded guilty to truancy,² the trial court entered an order of disposition placing Chapman on probation. The terms of probation were substance abuse treatment, drug screening, tutoring, and mandatory school attendance. Electronic monitoring was authorized. In May 2007, Chapman's probation officer, Andrew Rea, filed a supplemental petition alleging that Chapman had failed to obey probationary requirements and directions. In particular, it alleged that Chapman had "behaved inappropriately in school and earned failing grades," "periodically disobeyed the conditions of his parent's residence and the laws of Garden City," and "received a citation for M[i]nor in Possession of Alcohol on 5/4/07." According to a report Rea filed with the trial court and his testimony at a June 2007 hearing,

¹ MCL 712A.21 (petition for rehearing); MCL 712A.18(1)(e) (order of disposition of juvenile; commitment to public institution).

² MCL 712A.2(a)(4).

after he was placed on probation, Chapman participated in a 14-day respite at the Wolverine Shelter in Detroit and a weekend boot camp program at Midcourse Corrections in Howell, but he nevertheless continued to have behavioral and substance abuse problems. Also since he was placed on probation, Chapman had been suspended from school three times for leaving school grounds during lunch, throwing a garbage can down the stairs, and pulling a wooden sword out of the garbage after a teacher had thrown it away. Although the results of all random drug tests of Chapman had been negative, Chapman had received a “minor in possession of alcohol” citation, and subsequently admitted to Rea that he continued to use alcohol on the weekends. Accordingly, Rea recommended that Chapman be placed with Wayne County Child and Family Services and receive treatment in a residential facility.

The referee found that Chapman had violated his probation and recommended placement with the Michigan Department of Human Services. Chapman now appeals.

II. Probation Violation

A. Standard Of Review

Chapman argues that petitioner failed to prove a probation violation by a preponderance of the evidence and that, therefore, the trial court’s revocation of Chapman’s probation was an abuse of discretion.

We review the trial court’s findings of fact during a juvenile sentencing hearing for clear error.³ “Findings of fact are clearly erroneous if, after review of the entire record, this Court is left with a definite and firm conviction that a mistake has been made.”⁴ We review the trial court’s order of disposition for an abuse of discretion.⁵ “An abuse of discretion standard acknowledges that there will be circumstances in which there will be no single correct outcome; rather, there will be more than one reasonable and principled outcome.”⁶ “When the trial court selects one of these principled outcomes, the trial court has not abused its discretion and thus, it is proper for the reviewing court to defer to the trial court’s judgment.”⁷

B. Analysis

At a probation violation hearing, the respondent has the right to have the petitioner prove the probation violation by a preponderance of the evidence.⁸ “If, after [a dispositional] hearing,

³ *People v Dilling*, 222 Mich App 44, 52; 564 NW2d 56 (1997).

⁴ *People v Brown*, 205 Mich App 503, 505; 517 NW2d 806 (1994).

⁵ See *People v Thenghkam*, 240 Mich App 29, 36-37; 610 NW2d 571 (2000), overruled on other grounds *People v Petty*, 469 Mich 108; 665 NW2d 443 (2003).

⁶ *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003).

⁷ *Id.*

⁸ MCR 3.944(C)(1)(c).

the court finds that a violation of probation has occurred, the court may modify the existing order of probation or order any disposition available under MCL 712A.18 or MCL 712A.18a.”⁹ One available disposition is the commitment of the juvenile to the family independence agency or county juvenile agency for placement into an appropriate institution or facility.¹⁰

In this case, the terms of Chapman’s probation were substance abuse treatment, drug screening, tutoring, and school attendance. On appeal, Chapman essentially argues that the trial court’s finding was clearly erroneous because the report and testimony of Chapman’s probation officer, Andrew Rea, left some question with respect to whether Chapman had received individual counseling and tutoring. However, Chapman cites no authority for the proposition that petitioner’s failure to provide these services would preclude a finding of a probation violation. In any event, the evidence suggests that significant efforts were made to provide Chapman with counseling and academic support. Rea did not know whether Chapman had actually received individual counseling, but testified that Chapman “reports to [a counseling office] Tuesdays, Wednesdays, and Thursdays of each week at which time he is able to receive individual counseling.” And although Rea testified that neither he nor his organization had referred Chapman to tutorial services, he said that he had spoken with Chapman’s principal and worked with his teachers. Rea also testified that Chapman had been instructed to attend Saturday classes at his school and complete reports about his daily progress in school but had not completed any reports. Finally, he testified that Chapman had participated in a 14-day respite program and attended a weekend boot camp program.

More importantly, there was evidence that Chapman affirmatively violated the terms of his probation with respect to school behavior and attendance, and alcohol use. According to Rea, after being placed on probation, Chapman continued to violate school rules and was suspended three times. Although he did attend school other than the times he was suspended, Chapman’s absences from school while he was suspended were the result of his misbehavior. In addition, Chapman received a citation for minor in possession of alcohol, and admitted to Rea that he continued to use alcohol on the weekends. Based on this evidence, the trial court did not clearly err in finding that Chapman had violated the terms of his probation. Because the trial court’s determination that Chapman violated the terms of his probation was supported by the facts, its decision to revoke his probation was not an abuse of discretion.

Nor did the trial court abuse its discretion in placing Chapman with the Michigan Department of Human Services. The evidence indicated that Chapman used alcohol and continued to have behavioral problems despite his participation in 14-day respite and boot camp programs. Further, the testimony of Chapman’s parents suggested that they were unable to control him. Chapman had been living with his mother since he was placed on probation, and she agreed with Rea’s recommendation to place Chapman in a residential facility. Chapman’s father said he was willing to allow Chapman to live with him instead of going into a residential

⁹ MCR 3.944(E)(1).

¹⁰ MCL 712A.18(1)(e). A proposed amendment to MCL 712A.18(1)(e) would replace “family independence agency” with “department of human services.” HB 5367.

treatment facility. But Chapman's mother testified that Chapman had lived with his father for eight months, and Chapman's father eventually asked her to come and get Chapman because he was sneaking out of the house and not going to school, and Chapman's father could not handle him. Chapman's father also testified that, multiple times since being placed on probation, Chapman had told his mother he was going to his father's house, and then gone elsewhere without telling either parent. Chapman's mother stated that Chapman "seems to want to play me and his dad back and forth." In light of this evidence, the trial court did not abuse its discretion in placing Chapman with the Michigan Department of Human Services.

Affirmed.

/s/ William C. Whitbeck

/s/ Helene N. White

/s/ Brian K. Zahra